APPENDIX

BANKRUPTCY ACT OF 1938

Title 11, U.S.C.A., Bankruptcy

Sec. 47-a.

"The Circuit Courts of Appeals of the United States and the United States Court of Appeals for the District of Columbia, in vacation, in chambers, and during their respective terms, as now or as they may be hereafter held, are hereby invested with appellate jurisdiction from the several Courts of bankruptcy in their respective jurisdictions in proceedings in bankruptcy, either in interlocutory or final, and in controversies arising in proceedings in bankruptcy, to review, affirm, revise, or reverse, both in matters of law and in matters of fact: * * * "

Sec. 47-b.

"Such appellate jurisdiction shall be exercised by appeal and in the form and manner of an appeal."

Sec. 48-a.

"Appeals under this Act to the Circuit Courts of Appeals of the United States and the United States Circuit Court of Appeals for the District of Columbia shall be taken within thirty days after written notice to the aggrieved party of the entry of the judgment, order or decree complained of, proof of which notice shall be filed within five days after service or, if such notice be not served and filed, then within forty days from such entry."

Sec. 67-c.

"A person aggrieved by an order of a referee may, within ten days after the entry thereof or within such

extended time as the court may for cause shown allow, file with the referee a petition for review of such order by a judge and serve a copy of such petition upon the adverse parties who were represented at the hearing. Such petition shall set forth the order complained of and the alleged errors in respect thereto. Upon application of any party in interest, the execution or enforcement of the order complained of may be suspended by the court upon such terms as will protect the rights of all parties in interest."

Sec. 203-n.

"The filing of a petition or answer with the clerk of court, or leaving it with the conciliation commissioner for the purpose of forwarding same to the clerk of court, praying for relief under section 75 of this Act, as amended, shall immediately subject the farmer and all his property wherever located, for all the purposes of this section, to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in any such property, including, among others, contracts for purchase, contracts for deed, or conditional sales contracts, the right or the equity of redemption where the period of redemption has not or had not expired, or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered, at the time of filing the petition.

"In all cases where, at the time of filing the petition, the period of redemption has not or had not expired, or where the right under a deed of trust has not or had not become absolute, or where the sale has not or had not been confirmed, or where deed had not been delivered, the period of redemption shall be extended or the confirmation of sale withheld for the period necessary for the purpose of carrying out the provisions of this section. The words 'period of redemption' wherever they occur in this section shall include any State moratorium, whether established by legisla-

tive enactment or executive proclamation, or where the period of redemption has been extended by a judicial decree. In proceedings under this section, except as otherwise provided herein, the jurisdiction and powers of the courts, the title, powers and duties of its officers, the duties of the farmer, and the rights and liabilities of creditors and of all persons with respect to the property of the farmer and the jurisdiction of the appellate courts, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the farmer's petition, asking to be adjudged a bankrupt, was filed with the clerk of court or left with the conciliation commissioner for the purpose of forwarding same to the clerk of the court."

Sec. 203-o.

"Except upon petition made to and granted by the judge after hearing and report by the conciliation commissioner, the following proceedings shall not be instituted, or if instituted at any time prior to the filing of a petition under this section, shall not be maintained, in any court or otherwise, against the farmer or his property, at any time after the filing of the petition under this section and prior to the confirmation or other disposition of the composition or extension proposal by the court:

(1) Proceedings for any demand, debt, or account, including any money demand;

(2) Proceedings for foreclosure of a mortgage on land, or for cancellation, rescission, or specific performance of an agreement for sale of land or for recovery of possession of land;

(3) Proceedings to acquire title to land by virtue of any tax sale;

(4) Proceedings by way of execution, attachment, or garnishment;

(5) Proceedings to sell land under or in satisfaction of any judgment or mechanic's lien; and

(6) Seizure, distress, sale, or other proceedings under an execution or under any lease, lien, chattel mortgage, conditional sale agreement, crop payment agreement, or mortgage."

Sec. 203-s.

"Any farmer failing to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a composition and/or extension proposal, or if he feels aggrieved by the composition and/or extension, may amend his petition or answer, asking to be adjudged a bankrupt. Such farmer may, at the same time, or at the time of the first hearing, petition the court that all of his property, wherever located, whether pledged, encumbered, or unencumbered, be appraised, and that his unencumbered exemptions, and unencumbered interest or equity in his exemptions, as prescribed by State law, be set aside to him, and that he be allowed to retain possession, under the supervision and control of the court, of any part or parcel or all of the remainder of his property, including his encumbered exemptions, under the terms and conditions set forth in this section. Upon such a request being made, the referee, under the jurisdiction of the court, shall designate and appoint appraisers, as provided for in this Act. Such appraisers shall appraise all of the property of the debtor, wherever located, at its then fair and reasonable market value. The appraisals shall be made in all other respects with rights of objections, exceptions, and appeals, in accordance with this Act: Provided, That in proceedings under this section, either party may file objections, exceptions, and take appeals within four months from the date that the referee approves the appraisal.

(1) After the value of the debtor's property shall have been fixed by the appraisal herein provided, the referee shall issue an order setting aside to such debtor his unencumbered exemptions, and his unencumbered interest or equity in his exemptions, as prescribed by

the State law, and shall further order that the possession, under the supervision and control of the court, of any part or parcel or all of the remainder of the debtor's property shall remain in the debtor, as herein provided for, subject to all existing mortgages, liens, pledges, or encumbrances. All such existing mortgages, liens, pledges, or encumbrances shall remain in full force and effect, and the property covered by such mortgages, liens, pledges, or encumbrances shall be subject to the payment of the claims of the secured creditors, as their interests may appear.

(2) When the conditions set forth in this section have been complied with, the court shall stay all judicial or official proceedings in any court, or under the direction of any official, against the debtor or any of his property, for a period of three years. During such three years the debtor shall be permitted to retain possession of all or any part of his property, in the custody and under the supervision and control of the court, provided he pays a reasonable rental semi-annually for that part of the property of which he retains possession."

DISSOLUTION OF IRRIGATION DISTRICTS

California Statutes, 1903, page 3.

Sec. 1.

"Any irrigation district * * * may be dissolved in the manner hereinafter provided; * * * "

Sec. 2.

"A majority in number of the holders of title, or evidence of title, to real property in any irrigation district and a majority in value of said property according to the equalized assessment roll of said district for the year last preceding upon which any assessment has been made, may propose the dissolution of said district

by a petition signed by such majority, which petition shall set forth the amount of the outstanding bonds, coupons, and other indebtedness, if such there be, together with a general description of the same, and the holders, so far as known, showing the amount of each description of indebtedness and the ownership, so far as known, of the same. Also the estimated cost of the dissolution of said district. Said petition shall also state the assets of said district, including irrigation system, if any, dams, reservoirs, canals, franchises, water rights, a detailed statement of all the lands sold to the district for assessments, and the amount of the assessments on each parcel of land sold, also all assessments unpaid, and the amount upon each lot or tract of land, and all other assets of the district; and in case any proposition has been made by the holders of said indebtedness to settle the same, said proposition, together with any plan proposed to carry the same into execution, shall be included in said petition."

Sec. 3.

"Upon the filing of said petition with the board of directors of said district said board shall call a special election, at which shall be submitted to the electors of such district the question whether or not said district shall be dissolved, its indebtedness liquidated, and its assets distributed in accordance with the plan so proposed, or in case no plan has been proposed, then in accordance with a plan which shall be proposed by said board of directors in the notice of the election, but no such election shall be called until the assent of all the known holders of valid indebtedness against the district shall be obtained or provision shall be made in said plan for the payment of such nonassenting holders. Notice of such election must be given by posting notices in three public places in each election precinct in said district for at least twenty days, and also by publication of such notice in some newspaper published in the county where the office of the board of directors is re-

quired to be kept, once a week for at least three successive weeks before such election. Such notices must specify the time of holding the election, the fact that it is proposed to dissolve the district, and a brief summary of the plan proposed for liquidating its indebtedness and disposing of its assets. Said election shall be held and the result thereof determined and declared in all respects as nearly as practicable in conformity with the provisions governing the election of officers in irrigation districts. At such election the ballot shall contain the words 'Dissolution of the district—Yes,' or 'Dissolution of the district—No,' or words equivalent thereto."

Sec. 4.

"In case upon such canvass it is found and declared by said board of directors that two-thirds of the votes cast at such election shall be cast in favor of 'Dissolution of the district—Yes,' then the said board of directors shall file a petition in the superior court of the county wherein is located the office of such board to determine the validity of the proceedings had and of the proposed plan for the dissolution of said district. Such action shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested may be had by publication of a notice of the pendency of the proceeding for at least once a week for three weeks in some paper of general circulation published in the county where the action is pending; provided, that if the property of the district is situate in more than one county then the publication shall be made in one paper in each county wherein the same is situate, such paper or papers to be designated by the court having jurisdiction of the proceeding; jurisdiction shall be complete in thirty days after the completion of such notice in the manner herein provided. Anyone interested may at any time before the expiration of said thirty days appear and contest the validity of the proceedings already had and of the plan proposed for the dissolution of said district, or

any portion thereof, including the validity of any portion of the indebtedness set out in said petition, and the court may determine the validity of any sales for assessments, and may determine the amount of any assessment or assessments due upon the various parcels and lots of real estate within said district, and may determine the amount of any assessment or assessments, theretofore paid upon the various parcels and lots of real estate therein, and may in said proceeding adjust and determine the rights and liabilities of all parties. Such action shall be speedily tried and judgment rendered. Either party shall have the right to appeal at any time within thirty days after the entering of such judgment, and the appeal must be heard and determined within three months after the taking of such appeal."

CALIFORNIA IRRIGATION DISTRICT ACT

(Statutes, 1897, P. 254, as amended to date)

Sec. 39.

"The board of directors shall then, within fifteen days after the close of its session as a board of equalization, levy an assessment upon the lands within the district in an amount sufficient to raise * * * * to pay in full all sums due or that will become due from the district before the close of the next ensuing calendar year on account of rentals or charges for lands, water, water rights, or other property acquired by said district under lease or contract; also sufficient to pay in full all sums due or that will become due from the district, before the close of the next ensuing calendar year on account of contracts entered into by the district for power or fuel used or to be used for the pumping of water for the irrigation of land within the district, * * * * also sufficient to pay in full the amount of all unpaid warrants of the district issued in accordance

with this act and the amount of any other contracts or obligations of the district which have been reduced to judgment; * * * * also sufficient to raise such amount not exceeding two percentum of the aggregate value of the lands within the district according to the latest duly equalized assessment roll thereof, as the board of directors shall determine may be needed to be raised by assessment for any of the purposes of this act. * * *"

Sec. 47.

"A redemption of the property sold may be made within three (3) years from the date of sale, or at any time thereafter before a deed has been made and delivered by payment in lawful money of the United States to the collector of the district of the amount for which the property was sold plus a penalty of three-fourths (¾) of 1 per cent per month from the date of sale until redemption. * * * * If the property is not redeemed within the time herein provided, the collector or his successor in office, upon demand, must make to the purchaser, or his assignee, holding the certificate of sale, a deed to the property, which deed shall refer to the date of the sale and state that no person redeemed the property during the time allowed by law for its redemption. * * * * Where property has been sold to the district and a deed for it has been given to the district as the purchaser, such district shall have the same rights thereto, and to the rents, issues and profits thereof, as a private purchaser. The district may also sell, convey, lease, give and also take options upon, and issue and take contracts of sale upon and otherwise deal with such property including sale of the same to a former owner or holder of said property, on such terms and at such price as may be approved by the board of directors. Instruments to accomplish the same shall be executed and acknowledged by the president and secretary of the board of directors. (Amended, Stats. 1939, p. 1576.)"

Sec. 47½.

"The period herein prescribed for the redemption of properties sold for delinquent assessments shall not operate as a bar to the dissolution of any irrigation district. If any land has been sold for delinquent assessments of a district in process of dissolution, or in a district which has been dissolved, and the time allowed for redemption has not expired, the owner of such property or anyone in interest may redeem the same by paying the amount due thereon, computed as provided in section 46 of this act, to the county treasurer, who must issue his receipt therefor, and upon the presentation of such receipt the county recorder must cancel the certificate of sale in the manner required in the preceding section. In the event any land has been sold for nonpayment of assessments as herein provided, and no redemption has been made within the time allowed in this act therefor, in any district which may have been dissolved before the expiration of said redemption period, then a deed for the property sold and described in the certificate of sale must be made to the purchaser upon demand by the county treasurer of the county in which said irrigation district is or was situated. Such deed shall contain all the recitals of the certificate of sale, and in addition thereto, a recital that the district has been dissolved, and a deed executed in pursuance of the authority given in this section. A deed so executed shall have the same force and effect as if executed by the collector of an irrigation district. (Amended Stats. 1927, p. 191)."

Sec. 68.

"The board of directors may, at any time after the issue of any bonds or the levy of any assessment herein provided for, bring an action in the superior court of the county wherein is located the office of such board, to determine the validity of any such bonds or such levy of assessments; * * * *"

Sec. 69.

"If no such proceedings shall have been brought by the board of directors, then, at any time within thirty days after the levy of any assessment or issue of any bonds under the provisions of this act, any district assessment payer may bring an action in the superior court of the County where the office of the board of directors is located to determine the validity of any such assessment or such bonds, * * * "

Sec. 71.

"The court hearing any of the contests herein provided for, in inquiring into the regularity, legality or correctness of such proceedings, must disregard any error, irregularity or omission which does not affect the substantial rights of the parties to said action or proceeding. The rules of pleading and practice provided by the Code of Civil Procedure, which are not inconsistent with the provisions of this act, are applicable to all actions or proceedings herein provided for."

Sec. 72.

"No contest of any thing or matter herein provided shall be made other than within the time and manner herein specified, and in any such action all findings of facts or conclusions of said board of directors, or of the board of supervisors upon all matters, shall be conclusive, unless such action was instituted within six months after such finding or conclusion was made. (Amended Stats. 1915, p. 1370)."

In the District Court of the United States for the Southern District of California Central Division

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Filed Jan. 12, 1943.
Edmund L. Smith, Clerk,
By Francis E. Cross, Deputy Clerk.
No. 35978-C Bkcy.

In the Matter of MINA L. COWAN, Debtor.

Order and Decree Dismissing Bankruptcy Proceedings with Respect to Certain Lands and Setting Aside the Order Restraining the Fallbrook Public Utility District from Proceeding with the Sale of said Certain Lands.

Pursuant to the mandate of the United States Circuit Court of Appeals for the Ninth Circuit issued on January 6, 1943, in the case of Fallbrook Public Utility District, a public corporation, Appellant, vs. Mina L. Cowan, and County of San Diego, Appellees, No. 10153, and on motion of Lindley & Higgins, attorneys for the Appellant, Fallbrook Public Utility District, a public corporation, petitioner herein, It is Hereby Ordered, Adjudged and Decreed as follows:

I.

That the bankruptcy proceedings entitled "In the Matter of Mina L. Cowan, Debtor, No. 35978-C Bkcy." now pending in this Court with respect to the lands hereinafter de-

scribed be, and the same are hereby, dismissed. The lands affected by this decree are hereby described as follows:

All that certain real property situated in the County of San Diego, State of California, more particularly described as follows:

PARCEL 1:

North Half and West Half of South Half of Lot 11, Subdivision of Tract "D" of Rancho Monserate, in the County of San Diego, State of California, according to Map No. 821, filed in the office of the County Recorder of San Diego County, September 25, 1896.

PARCEL 2:

All of Lot 12, Subdivision of Tract "D" of Rancho Monserate, above described, EXCEPTING therefrom the East 20 feet for road purposes.

PARCEL 3:

All that portion of Lot 19, Subdivision of Tract "D" of Rancho Monserate, described as follows:
Commencing at Southeast corner of said Lot; thence North 89° 38′ 12″ West along the South line of said Lot, 713.24 ft.; thence North 0° 9′ 14″ West 1322.25 ft. to a point in North line of said Lot; thence South 89° 38′ 12″ East along said North line, 713.24 ft. to Northeast corner of said Lot; thence South 0° 9′ 14″ East, 1322.25 ft. to point of commencement; EXCEPTING therefrom the East 20 feet and South 20 feet reserved for roads.

PARCEL 4:

West Half of Lot 25, Subdivision of Tract "D" of Rancho Monserate, EXCEPTING therefrom the East 20 feet and North 20 feet thereof for road purposes.

PARCEL 5:

All that portion of Lot 23, Subdivision of Tract "D" described as follows:

Commencing at Southwest corner of East Half of said Lot; thence Northerly a distance of 849.06 feet to a 2-inch iron stake; thence Easterly a distance of 760.96 feet to a point in the East line of said Lot 23, distant Southerly 495 feet from Northeast corner of said Lot; thence South along East line of said Lot to the Southeast corner thereof; thence West 760.96 feet to point of commencement; EXCEPTING therefrom the South 4 acres of West 10 acres of East Half of said Lot 23 conveyed to Mary Scully by Ada Scott Morton and husband, by deed dated June 15, 1916, and recorded in Book 710, Page 160 of Deeds.

PARCEL 6:

All that portion of Lot 24 of said Subdivision, described as follows:

Commencing at Southwest corner of said Lot; thence South 89° 38′ 12″ East along South line of said Lot, 781.50 feet to a point; thence North 0° 9′ 14″ West, 1344.07 feet, more or less, to a point in North line of said Lot; thence North 89° 38′ 12″ West along said North line, 781.51 feet to Northwest corner of said Lot; thence South 0° 9′ 16″ East along West line of said Lot, 1344.07 feet, more or less, to point of commencement; EXCEPTING therefrom the North 495 feet.

II.

The restraining order heretofore issued on March 20, 1940, directed to the County of San Diego of the State of California, its officers, attorneys, servants, employees, or anyone acting for, through or under said County, and to the Fallbrook Public Utility District, its officers, directors, at-

torneys, servants, employees, or anyone acting under, through or by its direction, enjoining and restraining said parties named from selling or attempting to sell, under and by virtue of excution or other process, any of the property of the debtor named, to-wit, Mina L. Cowan, described in this decree be, and the same is hereby, set aside, vacated and dissolved.

Done in Open Court this 12th day of January, 1943.

PAUL J. McCORMICK,
Judge of the District Court
of the United States.

A true copy,
Attest, etc.

Edmund L. Smith, Clerk U. S. District Court,
Southern District of California.
By Francis E. Cross, Deputy.

Jan. 12, 1943.
(Seal of Court.)